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09/319,243	08/05/1999	PING LIONG TJOA		2663

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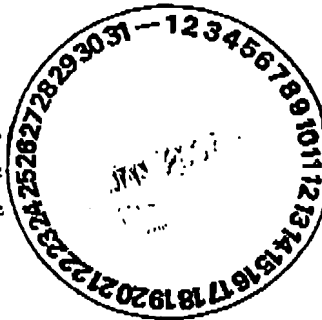
EXAMINER
 HAMILTON, LALITA M

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/319,243
Filing Date: August 05, 1999
Appellant(s): TJOA, PING LIONG

Felix J. D'Ambrosio
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 18, 2006 appealing from the Office action mailed February 27, 2006.

Application/Control Number: 09/319,243
Art Unit: 3691

Page 2

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the Examiner, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

The earlier appeal filed on March 31, 2003, which was remanded by the Board of Appeals back to the Examiner.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claims 12, 14-16, and 22-23 are rejected as being anticipated under 35 U.S.C. 102(b) by Posko.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

Application/Control Number: 09/319,243
Art Unit: 3891

Page 3

(8) Evidence Relied Upon

Bosko et al 3,334,899 8-1967
Coallier 5,580,336 12-1996
Jackson, Jr. 4,002,163 1-1977

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 14-16, and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosko (3,334,899).

Bosko discloses a training apparatus for massing the palms and promoting body bearing motion (may be in any shape or size for all practical reasons on the device of physicians or trainers (col.1, lines 40-45); an intermediate element formed as a rod (12); identical end elements, each situated at a respective end of said intermediate element (10, 11); each end element has a spherical form, the diameter of which is adapted to the palm of the hand of the training person (col.1, lines 35-50—may be any size or shape); a non-discontinuous spherical surface remote from said intermediate element, a turning region and a conversely concave region on its side toward said intermediate element, said turning region making a steady transition into said conversely concave region,

Application/Control Number: 09/319,243
Art Unit: 3691

Page 4

wherein the conversely concave region making a steady transition to said intermediate element (fig.5); the total length of the training apparatus is approximately the range of the length of the shoulder span of the person using it (col.5, lines 40-45—short or long bars of any size may be used); the radius of the conversely concave region is approximately equal to the radius of the non-discontinuous spherical surface (col.1, lines 35-50 and col.5, lines 40-45—any size or shape may be used); conversely concave region and said turning region form a smaller minimum diameter than the equivalent of the maximum diameter of the intermediate element (fig.5); intermediate element is cylindrical over a substantial portion of its length (fig.5: 12); training apparatus is molded in one piece (fig.1 and 5); and the training apparatus is made of one of: wood, plastic, metal, and stone (col.1, lines 35-50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Application/Control Number: 09/319,243
Art Unit: 3691

Page 5

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko in view of Coallier (5,580,336).

Bosko discloses the invention substantially as claimed; Bosko does not specifically disclose the radius of the spherical surface being between 30 mm and 75mm. Bosko does disclose that any size or shape may be used. Coallier teaches a hand exerciser comprising a radius of the spherical surface being between 30 mm and 75 mm (col.3, lines 25-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a radius of the spherical surface being between 30 mm and 75 mm, as taught by Coallier into the invention disclosed by Bosko, to provide a device having a size adequate for massaging as directed by a physician/therapist.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko on view of Jackson (4,002,163).

Bosko discloses the invention substantially as claimed; however, Bosko does not disclose a minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm or the total length of the apparatus being between 200 and 1200 mm. Bosko does disclose that the device may be any size or shape. Jackson teaches an exerciser and roller massage comprising a minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm (col.2, lines 15-36) and the total length of the apparatus being between 200 and 1200 mm (col.2, lines 15-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a

Application/Control Number: 09/319,243
Art Unit: 3691

Page 6

minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm or the total length of the apparatus being between 200 and 1200 mm, as taught by Jackson into the invention disclosed by Bosko, to provide a device having a size and shape adequate for massaging as directed by a physician/therapist.

(10) Response to Argument

The Appellant argues that the short and long bars disclosed by Bosko are used to change from dumbbells to barbells and that the size alone would be too massive for the user to even consider placing the spheres in the palms of their hands. In response, Bosko discloses that the balls of the dumbbells or barbells may be of any practical size and convenient shape which would become advisable for all practical reasons on the device of physicians or trainers (col.3, lines 40-45). Therefore, the size of the bars or balls used may be of any size or shape, including being fitted to the palm of the hand, if it is found necessary to do so.

The Appellant argues that the Examiner suggests that "all that matters is that 'Applicant has apparatus claims' and not 'method claims'". In response to the method vs. apparatus claims argument, as long as the structure disclosed by Bosko reads onto the claimed apparatus limitations, the Examiner cannot change the rejection. The Bosko reference would be interpreted in a different light if the Applicant were claiming a method of massaging the palms, but this is not so, and thus, the Bosko reference may be interpreted as possessing the capability to massage the palms of the hands given the structural limitations disclosed by Bosko.

Application/Control Number: 09/319,243
Art Unit: 3691

Page 7

The Appellant argues that the apparatus being adapted to the palm of the hand is not a broad range. In response, Bosko discloses that the balls may be of any shape practical, thus, the balls may be adapted to the palm of the hand if found to be practical by a physician.

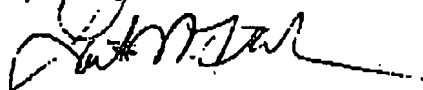
The Appellant argues that the Examiner has not given the declarations its due consideration. In response, the Examiner has given consideration to the declarations. Bosko disclosed the structural limitations of the claimed invention. Thus, the Examiner did not find that the declarations helped to place the application in condition for allowance.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Lalita M. Hamilton, Primary Examiner 3691

Conferees:

Hani Kazimi, Primary Examiner 3691 

Alexander Kalinowski, SPE 3691 

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